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HOUSE BILL 2588

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By Representatives Buck, Hatfield, Casada, Sheldon, Kessler, Johnson, Radcliff, Pennington, Basich, Patterson and Thompson

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1 AN ACT Relating to the restoration and redevelopment of an  
2 unfinished nuclear energy facility; amending RCW 80.50.010, 80.50.020,  
3 and 80.50.040; and adding a new section to chapter 80.50 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 80.50.010 and 1975-'76 2nd ex.s. c 108 s 29 are each  
6 amended to read as follows:

7 The legislature finds that the present and predicted growth in  
8 energy demands in the state of Washington requires the development of  
9 a procedure for the selection and utilization of sites for energy  
10 facilities and the identification of a state position with respect to  
11 each proposed site. The legislature recognizes that the selection of  
12 sites will have a significant impact upon the welfare of the  
13 population, the location and growth of industry and the use of the  
14 natural resources of the state.

15 It is the policy of the state of Washington to recognize the  
16 pressing need for increased energy facilities, and to ensure through  
17 available and reasonable methods, that the location and operation of  
18 such facilities will produce minimal adverse effects on the

1 environment, ecology of the land and its wildlife, and the ecology of  
2 state waters and their aquatic life.

3 It is the intent to seek courses of action that will balance the  
4 increasing demands for energy facility location and operation in  
5 conjunction with the broad interests of the public. Such action will  
6 be based on these premises:

7 (1) To assure Washington state citizens that, where applicable,  
8 operational safeguards are at least as stringent as the criteria  
9 established by the federal government and are technically sufficient  
10 for their welfare and protection.

11 (2) To preserve and protect the quality of the environment; to  
12 enhance the public's opportunity to enjoy the esthetic and recreational  
13 benefits of the air, water and land resources; to promote air  
14 cleanliness; and to pursue beneficial changes in the environment.

15 (3) To provide abundant energy at reasonable cost.

16 (4) To avoid costs of complete site restoration and demolition of  
17 improvements and infrastructure at unfinished nuclear energy sites, and  
18 to use unfinished nuclear energy facilities for public uses, including  
19 economic development, under the regulatory and management control of  
20 local governments and port districts.

21 **Sec. 2.** RCW 80.50.020 and 1995 c 69 s 1 are each amended to read  
22 as follows:

23 (1) "Applicant" means any person who makes application for a site  
24 certification pursuant to the provisions of this chapter;

25 (2) "Application" means any request for approval of a particular  
26 site or sites filed in accordance with the procedures established  
27 pursuant to this chapter, unless the context otherwise requires;

28 (3) "Person" means an individual, partnership, joint venture,  
29 private or public corporation, association, firm, public service  
30 company, political subdivision, municipal corporation, government  
31 agency, public utility district, or any other entity, public or  
32 private, however organized;

33 (4) "Site" means any proposed or approved location of an energy  
34 facility;

35 (5) "Certification" means a binding agreement between an applicant  
36 and the state which shall embody compliance to the siting guidelines,  
37 in effect as of the date of certification, which have been adopted  
38 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to

1 be met prior to or concurrent with the construction or operation of any  
2 energy facility;

3 (6) "Associated facilities" means storage, transmission, handling,  
4 or other related and supporting facilities connecting an energy plant  
5 with the existing energy supply, processing, or distribution system,  
6 including, but not limited to, communications, controls, mobilizing or  
7 maintenance equipment, instrumentation, and other types of ancillary  
8 transmission equipment, off-line storage or venting required for  
9 efficient operation or safety of the transmission system and overhead,  
10 and surface or subsurface lines of physical access for the inspection,  
11 maintenance, and safe operations of the transmission facility and new  
12 transmission lines constructed to operate at nominal voltages in excess  
13 of 200,000 volts to connect a thermal power plant to the northwest  
14 power grid: PROVIDED, That common carrier railroads or motor vehicles  
15 shall not be included;

16 (7) "Transmission facility" means any of the following together  
17 with their associated facilities:

18 (a) Crude or refined petroleum or liquid petroleum product  
19 transmission pipeline of the following dimensions: A pipeline larger  
20 than six inches minimum inside diameter between valves for the  
21 transmission of these products with a total length of at least fifteen  
22 miles;

23 (b) Natural gas, synthetic fuel gas, or liquified petroleum gas  
24 transmission pipeline of the following dimensions: A pipeline larger  
25 than fourteen inches minimum inside diameter between valves, for the  
26 transmission of these products, with a total length of at least fifteen  
27 miles for the purpose of delivering gas to a distribution facility,  
28 except an interstate natural gas pipeline regulated by the United  
29 States federal power commission;

30 (8) "Independent consultants" means those persons who have no  
31 financial interest in the applicant's proposals and who are retained by  
32 the council to evaluate the applicant's proposals, supporting studies,  
33 or to conduct additional studies;

34 (9) "Thermal power plant" means, for the purpose of certification,  
35 any electrical generating facility using any fuel, including nuclear  
36 materials, for distribution of electricity by electric utilities;

37 (10) "Energy facility" means an energy plant or transmission  
38 facilities: PROVIDED, That the following are excluded from the  
39 provisions of this chapter:

1 (a) Except as provided in section 4 of this act, facilities for the  
2 extraction, conversion, transmission or storage of water, other than  
3 water specifically consumed or discharged by energy production or  
4 conversion for energy purposes; and

5 (b) Facilities operated by and for the armed services for military  
6 purposes or by other federal authority for the national defense;

7 (11) "Council" means the energy facility site evaluation council  
8 created by RCW 80.50.030;

9 (12) "Counsel for the environment" means an assistant attorney  
10 general or a special assistant attorney general who shall represent the  
11 public in accordance with RCW 80.50.080;

12 (13) "Construction" means on-site improvements, excluding  
13 exploratory work, which cost in excess of two hundred fifty thousand  
14 dollars;

15 (14) "Energy plant" means the following facilities together with  
16 their associated facilities:

17 (a) Any stationary thermal power plant with generating capacity of  
18 two hundred fifty thousand kilowatts or more, measured using maximum  
19 continuous electric generating capacity, less minimum auxiliary load,  
20 at average ambient temperature and pressure, and floating thermal power  
21 plants of fifty thousand kilowatts or more, including associated  
22 facilities;

23 (b) Facilities which will have the capacity to receive liquified  
24 natural gas in the equivalent of more than one hundred million standard  
25 cubic feet of natural gas per day, which has been transported over  
26 marine waters;

27 (c) Facilities which will have the capacity to receive more than an  
28 average of fifty thousand barrels per day of crude or refined petroleum  
29 or liquified petroleum gas which has been or will be transported over  
30 marine waters, except that the provisions of this chapter shall not  
31 apply to storage facilities unless occasioned by such new facility  
32 construction;

33 (d) Any underground reservoir for receipt and storage of natural  
34 gas as defined in RCW 80.40.010 capable of delivering an average of  
35 more than one hundred million standard cubic feet of natural gas per  
36 day; and

37 (e) Facilities capable of processing more than twenty-five thousand  
38 barrels per day of petroleum into refined products;

1 (15) "Land use plan" means a comprehensive plan or land use element  
2 thereof adopted by a unit of local government pursuant to chapters  
3 35.63, 35A.63, or 36.70 RCW;

4 (16) "Zoning ordinance" means an ordinance of a unit of local  
5 government regulating the use of land and adopted pursuant to chapters  
6 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

7 **Sec. 3.** RCW 80.50.040 and 1990 c 12 s 4 are each amended to read  
8 as follows:

9 The council shall have the following powers:

10 (1) To adopt, promulgate, amend, or rescind suitable rules and  
11 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions  
12 of this chapter, and the policies and practices of the council in  
13 connection therewith;

14 (2) To develop and apply environmental and ecological guidelines in  
15 relation to the type, design, location, construction, and operational  
16 conditions of certification of energy facilities subject to this  
17 chapter;

18 (3) To establish rules of practice for the conduct of public  
19 hearings pursuant to the provisions of the Administrative Procedure  
20 Act, as found in chapter 34.05 RCW;

21 (4) To prescribe the form, content, and necessary supporting  
22 documentation for site certification;

23 (5) To receive applications for energy facility locations and to  
24 investigate the sufficiency thereof;

25 (6) To make and contract, when applicable, for independent studies  
26 of sites proposed by the applicant;

27 (7) To conduct hearings on the proposed location of the energy  
28 facilities;

29 (8) To prepare written reports to the governor which shall include:

30 (a) A statement indicating whether the application is in compliance  
31 with the council's guidelines, (b) criteria specific to the site and  
32 transmission line routing, (c) a council recommendation as to the  
33 disposition of the application, and (d) a draft certification agreement  
34 when the council recommends approval of the application;

35 (9) To prescribe the means for monitoring of the effects arising  
36 from the construction and the operation of energy facilities to assure  
37 continued compliance with terms of certification and/or permits issued  
38 by the council pursuant to chapter 90.48 RCW or subsection (12) of this

1 section: PROVIDED, That any on-site inspection required by the council  
2 shall be performed by other state agencies pursuant to interagency  
3 agreement: PROVIDED FURTHER, That the council shall retain authority  
4 for determining compliance relative to monitoring;

5 (10) To integrate its site evaluation activity with activities of  
6 federal agencies having jurisdiction in such matters to avoid  
7 unnecessary duplication;

8 (11) To present state concerns and interests to other states,  
9 regional organizations, and the federal government on the location,  
10 construction, and operation of any energy facility which may affect the  
11 environment, health, or safety of the citizens of the state of  
12 Washington;

13 (12) To issue permits in compliance with applicable provisions of  
14 the federally approved state implementation plan adopted in accordance  
15 with the Federal Clean Air Act, as now existing or hereafter amended,  
16 for the new construction, reconstruction, or enlargement or operation  
17 of energy facilities: PROVIDED, That such permits shall become  
18 effective only if the governor approves an application for  
19 certification and executes a certification agreement pursuant to this  
20 chapter: AND PROVIDED FURTHER, That all such permits be conditioned  
21 upon compliance with all provisions of the federally approved state  
22 implementation plan which apply to energy facilities covered within the  
23 provisions of this chapter; ((and))

24 (13) To serve as an interagency coordinating body for energy-  
25 related issues; and

26 (14) As set forth in section 4 of this act, to require certificate  
27 holders for unfinished and never-used nuclear power sites and  
28 facilities to cooperate with the county in which the sites are located,  
29 and with port districts within those counties, for adaptation and reuse  
30 of the sites and facilities for public purposes, including economic  
31 development; to provide that adaptation and reuse be pursued under the  
32 regulatory and management control of the counties and port districts;  
33 and to issue duplicative permits for adaptation and reuse.

34 NEW SECTION. Sec. 4. A new section is added to chapter 80.50 RCW  
35 to read as follows:

36 (1) If a certificate holder stops construction of a nuclear energy  
37 facility before completion, terminates the project or otherwise  
38 resolves not to complete construction, never introduces or stores the

1 energy facility on-site, and never operates the energy facility as  
2 designed to produce energy, then the certificate holder and the council  
3 shall proceed as follows to secure the site and the energy facility,  
4 and to provide for restoration or redevelopment of the site, energy  
5 facility, and other improvements: The certificate holder shall  
6 establish cooperative arrangements by contract, interlocal agreements,  
7 memorandums of understanding, or by other formal means with the county  
8 in which the site is located, and/or with a port district within the  
9 county. The local cooperative arrangement shall include, among other  
10 things, provisions to effect the following:

11 (a) The county or port district either takes title, has first  
12 option to take title or enter into a long-term lease or lease with  
13 purchase option, or has an unconditional right of first refusal to  
14 obtain title to or lease all or portions of the site, energy facility,  
15 and other improvements;

16 (b) The county or port district shall pursue opportunities to adapt  
17 the site, energy facility, and other improvements for public purposes,  
18 including economic development;

19 (c) The certificate holder shall continue paying the costs of  
20 security and maintenance for the site, energy facility, and other  
21 improvements to ensure, at a minimum, that they remain in compliance  
22 with applicable permits and that the permits are kept current, and to  
23 ensure adequate protection for public safety, health, and the  
24 environment. The certificate holder, the county, and the port district  
25 may provide security and maintenance services as mutually agreed;

26 (d) The certificate holder shall assist in the funding of capital  
27 improvements at the site to accommodate alternative uses identified and  
28 promoted by the county or the port district. Funding assistance for  
29 capital improvements shall be limited to projects that contribute to  
30 making the site economically self-sufficient, and shall be provided in  
31 the form and amounts agreed to between the certificate holder and the  
32 county or port district;

33 (e) The certificate holder may retain interests in all or portions  
34 of the site, energy facility, and other improvements for development of  
35 energy projects as agreed with the county or port district; and

36 (f) The certificate holder, the county, and the port district may  
37 pursue demolition and salvage of the energy facility and other  
38 improvements, and restoration of the site to a reasonable approximation  
39 of its original condition, as mutually agreed.

1 (2) Upon establishment of a local cooperative arrangement, the site  
2 certification agreement shall be suspended to the extent necessary for  
3 the county to regulate pursuant to local and state law those portions  
4 of the site, energy facility, and other improvements in which the  
5 county or port district hold a leasehold or ownership interest, or an  
6 option to acquire such an interest. Capital improvements and  
7 development at the site that are not subject to regulation by the  
8 council as an anergy project shall be regulated by the county pursuant  
9 to local and state law.

10 (3) Upon establishment of a local cooperative arrangement, all  
11 permits granted under the site certification agreement shall remain in  
12 effect. When an option, ownership, or leasehold interest in all or  
13 portions of the site, energy facility, or other improvements is  
14 transferred from the certificate holder to the county or port district,  
15 the council shall issue, as requested by the county or port district  
16 duplicative permits to the county or port district applying to the  
17 property transferred. These permits shall allow the county or port  
18 district to pursue public uses, including economic development  
19 activities.

20 (a) If the water rights or permits for the extraction, conversion,  
21 transmission, storage, or use of water issued at the time certification  
22 was granted have since been forfeited or otherwise modified so as to  
23 reduce the amount of water that would be transferred by duplicative  
24 permit to the county or port district, the council shall issue a water  
25 right or permits to the county or port district for an amount of water  
26 that:

27 (i) Does not exceed the amount of the water right originally issued  
28 to the certificate holder for the energy project;

29 (ii) Reserves for the certificate holder a water right of  
30 sufficient amount to meet its needs for site restoration and currently  
31 planned energy projects at the site;

32 (iii) Does not adversely affect any senior water rights; and

33 (iv) Bears the same priority date as the original water right  
34 issued to the certificate holder.

35 (b) From the date of issue, the county or port district shall use  
36 the water right for public purposes, including economic development,  
37 and shall comply with applicable stream flow requirements and other  
38 provisions of state water law.

1       (4) The site certification agreement shall remain suspended as  
2 provided in subsection (2) of this section until the local cooperative  
3 arrangement expires or is terminated by its terms, at which time the  
4 council shall resume full regulatory authority under the site  
5 certification agreement for the portions of the site, energy facility,  
6 and other improvements in which an option, leasehold, ownership, or  
7 other interest has not been transferred to the county or port district.  
8 Regulatory responsibility for the permits issued under subsection (3)  
9 of this section shall be transferred from the council to the  
10 appropriate state or local agency, and these permits are valid as if  
11 they were issued by that agency.

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